UNITED	STATES DISTRICT COURT
FOR THE	SOUTHERN DISTRICT OF NEW YORK

AMERICAN SAFETY CASUALTY INSURANCE COMPANY,

Plaintiff,

-against-

WALTER GERASIMOWICZ and MEDITRON REAL ESTATE PARTNERS, LLC,

Civil Action No.:

Defendants.

# COMPLAINT

Plaintiff American Safety Casualty Insurance Company ("ASCIC"), by its attorneys,

Ernstrom & Dreste, LLP, for its Complaint against Defendants Walter Gerasimowicz

("Gerasimowicz") and Meditron Real Estate Partners, LLC ("Meditron") (collectively referred to as "Defendants"), alleges as follows:

# PARTIES

- 1. Plaintiff ASCIC is a foreign corporation, incorporated in the State of Oklahoma and authorized to issue surety bonds and insurance policies in the State of New York, with a principal place of business located at 100 Galleria Parkway, Suite 700, Atlanta, Georgia 30339.
- 2. Upon information and belief, Defendant Meditron was and is a foreign corporation, incorporated in the State of Delaware, with a principal place of business located at 641 Lexington Avenue, New York, New York 10022.
- Upon information and belief, Defendant Gerasimowicz is an individual residing at
   Riverside Blvd., #32A, New York, New York 10069.

# JURISDICTION AND VENUE

- 4. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 in that complete diversity of citizenship exists between the Plaintiff and Defendants, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.
- Venue is proper in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391(a).

# FACTUAL BACKGROUND

- 6. On or about September 22, 2009, in order to induce ASCIC to issue surety bonds ("Bonds") on behalf of non-party SMC Electrical Contracting, Inc. ("SMC") as bond principal, Gerasimowicz, Meditron, and SMC executed a general agreement of indemnity in favor of ASCIC. Due to a change in address, this general agreement of indemnity was supplemented by another general agreement of indemnity dated February 1, 2010 (collectively "Indemnity Agreement"). True and complete copies of both general agreements of indemnity are attached hereto as "Exhibit A" and made part hereof.
- Other than the date of execution and the address of SMC, the September 22, 2009
   agreement and the February 1, 2010 agreement are the same.
- 8. Pursuant to the Indemnity Agreement, Defendants agreed, jointly and severally, to indemnify and hold ASCIC harmless for any and all claims, demands, liability, losses, costs, expenses of whatsoever kind or nature, including court costs, attorneys' fees, adjusting costs, consulting costs, and investigative costs, and from and against any and all other such losses and expenses that ASCIC may incur.
- 9. Specifically, pursuant to Section II(A) of the Indemnity Agreement, Defendants agreed, in pertinent part:

to jointly and severally, shall exonerate, hold harmless, indemnify and keep indemnify [ASCIC] from and against any and all claims, demands, liability, losses, costs, expenses of whatsoever kind or nature, including court costs, attorneys' fees, adjusting costs and investigative costs, and from and against any and all other such losses and expenses which [ASCIC] may sustain, suffer or incur (i) By reason of having executed or procured the execution of the [Bonds]; (ii) By reason of the failure of the [SMC] or [Defendants] to perform or comply with any of the covenants or conditions of the Agreement, including but not limited to the payment of all premiums due for [Bonds]; (iii) In enforcing any of the covenants, obligations, or conditions of the Agreement; (iv) In making any investigations, obtaining or attempting to obtain a release under or exoneration of a [Bonds] or of [SMC] or [ASCIC], or recovering or attempting to recover loss or expense paid or unpaid bond premium in connection with this Agreement or any [Bonds]; (v) In prosecuting or defending any action or claim in connection with any [Bonds], whether [ASCIC] at its sole option elects to employ its own counsel, or permits or requires [SMC] and [Defendants] to make arrangements for [ASCIC's] legal representation; (vi) By reason of the occurrence of any Event of Default by [SMC] or Defendants]; (vii) As a result of liability incurred or amounts paid in satisfaction or settlement of any or all claims, demands, damages, costs, losses, suits, proceedings or judgments relating to [SMC's] nonperformance of an obligation, CONTRACT or any other matter under or covered by a BOND; (viii) As a result of liability incurred or expenses paid in connection with claims, suits judgments relating to an obligation, CONTRACT, or a BOND, including, without limitation, attorneys' fees and all legal expenses, including inhouse attorney's fees, adjusting fees, investigative fess and all see and cost for investigating, accounting, adjusting, engineering or other professional services related to the adjustment of claims and losses deemed necessary or appropriate in the sole discretion of [ASCIC].

- 10. The Indemnity Agreement was part of the consideration given by SMC to ASCIC in exchange for issuing the Bonds.
- 11. After Defendants executed the Indemnity Agreement, and at the specific request of SMC, ASCIC issued payment and performance bonds for a construction project at the September 11 Memorial (the "9/11 Project"), naming Johnson Controls, Inc. ("JCI") as the bond obligee and SMC as principal ("9/11 Bond").
- 12. After Defendants executed the Indemnity Agreement, and at the specific request of SMC, ASCIC also issued payment and performance bonds for a construction project at Erasmus Hall High School ("Erasmus High School Project"), naming the New York City School

Construction Authority ("NYC SCA") as the bond obligee and SMC as principal ("Erasmus Bond").

- On the 9/11 Project, SMC entered into a subcontract with JCI by which SMC was obligated to provide certain labor, work, services, materials, equipment, and/or other items to the 9/11 Project in connection with its automatic temperature controls and building management systems ("Subcontract").
- 14. During the performance of SMC's work on the 9/11 Project, JCI alleged that SMC continually defaulted on its contractual obligations.
- 15. On September 20, 2011, prior to completing its Subcontract work, SMC filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court, Southern District of New York, case no. 11-14599 (SMB). This case was converted from a Chapter 11 to Chapter 7 on or about February 4, 2013.
- 16. JCI further alleged that, on or about October 12, 2011, SMC abandoned the 9/11 Project prior to completing its contractual scope of work.
- 17. On or about October 14, 2011, JCI made a claim against the performance bond issued by ASCIC on behalf of SMC for the 9/11 Project, alleging that SMC had defaulted pursuant to the Subcontract and otherwise abandoned the 9/11 Project.
- 18. Upon receipt of JCI's claim, ASCIC began an investigation of the facts and circumstances surrounding JCI's claim and SMC's performance on the 9/11 Project.
- 19. On January 18, 2012, JCI commenced an action in state court against ASCIC alleging that ASCIC, pursuant to its performance bond obligations, was liable to JCI as a result of SMC's alleged default and abandonment of the 9/11 Project. The action commenced by JCI

against ASCIC was subsequently removed to the United States District Court for the Southern District of New York, civil action number 1:12-cv-01171-JSR.

- 20. As a result of the performance bond claim and lawsuit brought by JCI, ASCIC deemed it necessary and appropriate to obtain legal and consulting services to assist ASCIC with its investigation and defense of the claims made.
- 21. In the course of the litigation, ASCIC resolved the JCI lawsuit in the good faith belief that ASCIC might be liable therefor and that such payment was necessary, expedient, or appropriate to protect ASCIC's rights or to avoid or lessen ASCIC's liability or alleged liability.
- 22. On or about April 8, 2013, the NYC SCA made a claim against the performance bond issued by ASCIC on behalf of SMC for the Erasmus High School Project, alleging that SMC had defaulted under the bonded contract and otherwise neglected its contractual obligations to the NYC SCA.
- 23. As a result of the NYC SCA's performance bond claim, ASCIC is exposed to additional loss, cost and expense pursuant to its performance bond obligations.
- 24. In addition to the performance bond claims as aforesaid, several of SMC's subcontractors and suppliers made payment bond claims against both the 9/11 Bond and the Erasmus Bond.
- 25. The payment bond claims were the direct result of SMC's failure to perform its payment obligations pursuant to its bonded contracts.
- 26. Upon due investigation, ASCIC paid certain payment bond claims in the good faith belief that ASCIC might be liable therefor and that such payments were necessary,

expedient, or appropriate to protect ASCIC's rights or to avoid or lessen ASCIC's liability or alleged liability.

- 27. All payments made by ASCIC in discharge of its obligations under the Bonds were made in accordance with the terms of the Indemnity Agreement and in the good faith belief that ASCIC was or may be liable for the amounts paid and/or that it was necessary, expedient, or appropriate to pay said amounts to protect ASCIC's rights or to avoid or lessen ASCIC's liability or alleged liability.
- 28. ASCIC remains exposed to additional losses and expenses due to pending payment and performance bond claims.
- On March 5, 2013 and March 22, 2013, pursuant to the Indemnity Agreement, ASCIC demanded that the Defendants reimburse ASCIC from the losses and expenses ASCIC has incurred to date as a result of issuing Bonds on behalf of SMC. ASCIC also demanded that Defendants post collateral security in the amount of \$600,000.00 to protect ASCIC from future and pending claims, losses, and expenses.
- 30. Despite due demand, Defendants have failed to reimburse ASCIC as required by the terms of the Indemnity Agreement.
- 31. Despite due demand, Defendants have failed to post collateral security as required by the terms of the Indemnity Agreement.
- 32. As a direct result of the claims made against the 9/11 Bond and Erasmus Bond, ASCIC has incurred losses, costs, and expenses in a sum that cannot be fully ascertained, but which may exceed the sum of \$900,343.00.

ASCIC remains exposed to additional losses, costs, and expenses in a sum that cannot be fully ascertained, but which may exceed \$600,000.00.

# AS AND FOR A FIRST CAUSE OF ACTION (Breach of Contract)

- 34. Plaintiff repeats and realleges paragraphs "1" through "31" of the Complaint as if fully set forth herein.
- 35. ASCIC fully performed its obligations under the Bonds and the Indemnity Agreement.
- 36. Despite due demand, Defendants have failed to indemnify ASCIC for the losses, costs, and expenses incurred by ASCIC by, among other things, having executed or procured the execution of the Bonds.
- 37. Defendants' failure to indemnify ASCIC constitutes, among other things, a material breach of the Indemnity Agreement.
- 38. Currently, the total amount due and owing to ASCIC is at least \$900,343.00, plus the costs and attorneys' fees associated with the enforcement of Defendants' obligations under the Indemnity Agreement.
- 39. As a direct result of Defendants' failure to indemnify ASCIC, ASCIC has been damaged in a sum that cannot be fully ascertained, but which may exceed the sum of \$900,343.00, plus interest, and additional costs, expenses, and attorneys' fees associated with enforcing the terms of the Indemnity Agreement.
- 40. By reason of the foregoing, ASCIC is entitled to judgment against Defendants, jointly and severally, for breach of the Indemnity Agreement in a sum that cannot be fully ascertained, but which may exceed the sum of \$900,343.00, plus interest, costs, expenses, and

attorneys' fees.

# AS AND FOR A SECOND CAUSE OF ACTION (Unjust Enrichment)

- 41. Plaintiff repeats and realleges paragraphs "1" through "38" of the Complaint as if fully set forth herein.
- 42. The sum of at least \$900,343.00 is presently due and owing to ASCIC from Defendants for the services rendered by and/or through ASCIC.
- 43\_ To permit the Defendants to retain the benefit of the services rendered by and/or through ASCIC without payment constitutes an unjust enrichment.
- 44. By reason of the foregoing, ASCIC is entitled to judgment against Defendants, jointly and severally, in a sum that cannot be fully ascertained, but which may exceed the sum of \$900,343.00, plus interest, and additional costs, expenses, and attorneys' fees.

# AS AND FOR A THIRD CAUSE OF ACTION (Specific Performance)

- 45. Plaintiff repeats and realleges paragraphs "1" through "42" of the Complaint as if fully set forth herein.
  - 46. Pursuant to Article II(B) of the Indemnity Agreement:

Payment shall be made to the SURETY by the PRINCIPAL and INDEMNITORS as soon as liability exists or is asserted against the SURETY, or upon the demand of SURETY, whether or not the SURETY shall have made any payment therefore. Such payment shall be ... equal to such amount as the SURETY, in its sole judgment, shall deem sufficient to protect it from loss...

47. Pursuant to the foregoing, on or about March 5, 2013 and March 22, 2013, ASCIC made a demand that the Defendants post collateral security in the amount of \$600,000.00 ("Collateral Demands").

- 48. Defendants have not responded to ASCIC'S Collateral Demands nor have Defendants posted the required collateral.
- 49. Defendants' failure to post collateral as demanded by ASCIC constitutes a material breach of the Indemnity Agreement.
- By reason of the foregoing, ASCIC is entitled to an order compelling Defendants to specifically comply with their obligations pursuant to the Indemnity Agreement, including, but not limited to, and the posting of collateral or other security in the sum of at least \$600,000.00.

# AS AND FOR A FOURTH CAUSE OF ACTION (Attorneys' Fees and Costs)

- 51. Plaintiff repeats and realleges paragraphs "1" through "48" of the Complaint as if fully set forth herein.
- 52. The Indemnity Agreement provides that ASCIC is entitled costs and fees, including court courts, counsel fees, and/or outside consulting fees ASCIC may sustain or incur in enforcing any of the covenants, obligations, or conditions of the Indemnity Agreement.
- 53. By reason of the foregoing, ASCIC is entitled to recover the attorneys' fees it incurs as a result of commencing this lawsuit.
- 54. By reason of the foregoing, ASCIC is entitled to judgment in its favor, jointly and severally, against Defendants in an amount which cannot presently be ascertained.

WHEREFORE, Plaintiff American Safety Casualty Insurance Company demands judgment as follows:

A. On its first cause of action, for judgment in its favor and against Defendants Walter Gerasimowicz and Meditron Real Estate Partners, LLC, jointly and severally, in a sum that cannot be fully ascertained, but which may exceed the sum of

\$900,343.00, plus interest, and additional costs, expenses, and attorneys' fees; and

B. On its second cause of action, for judgment in its favor and against

Defendants Walter Gerasimowicz and Meditron Real Estate Partners, LLC, jointly and

severally, in a sum that cannot be fully ascertained, but which may exceed the sum of

\$900,343,00, plus interest, and additional costs, expenses, and attorneys' fees; and

C. On its third cause of action, for an order directing Defendants Walter

Gerasimowicz and Meditron Real Estate Partners, LLC to specifically comply with their

obligations under the Indemnity Agreement to post collateral security in the amount of

\$600,000.00; and

D. On its fourth cause of action, for judgment in its favor and against

Defendants Walter Gerasimowicz and Meditron Real Estate Partners, LLC, jointly and

severally, for its attorneys' fees and costs, in an amount to be determined by this Court;

and

E. For such other or further relief as this Court may deem just and proper.

Dated: April 26, 2013

Rochester, New York

**ERNSTROM & DRESTE, LLP** 

BY:

Todd R. Braggins, Esq.

Bar Roll Number: TB-71

Attorneys for Plaintif

American Safety Casualty Insurance Company

180 Canal View Boulevard, Suite 600

Rochester, New York 14623

Telephone: 585-473-3100

TBraggins@ed-llp.com

# Exhibit A



American Safety Casualty Insurance Company 100 Galleria Parkway-Suite 700 Atlanta, GA. 30339 Tall Free: 800.388.3647 770.916.1908 Tele 770.955.8339 Faxs

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## GENERAL AGREEMENT OF INDEMNITY

THIS General Agreement of Indemnity (hereinafter called Agreement), made and entered into this 22 day of September 2009 by the undersigned as PRINCIPAL and INDEMNITORS, and American Safety Casualty Insurance Company, as SURETY; and,

WHEREAS, the PRINCIPAL, in the performance of contracts and the fulfillment of obligations generally, whether solely in its own name or as co-venturer with others, may desire, or be required, to give or procure cortain BONDS; and,

WHEREAS, at the request of the PRINCIPAL and the INDEMNITORS and upon the express understanding that this Agreement should be given, the SURETY has exercised or procured to be executed, and may from time to time hereafter execute or procure to be executed, said BONDS on behalf of the PRINCIPAL; and,

WHEREAS, the INDEMINITORS have a substantial, material or beneficial interest in the obtaining, renewing, continuing or substituting of the BONDS; and,

WHEREAS, SURETY has relied upon and will continue to rely upon the representations of PRINCIPAL and INDEMNITORS as to their character, identity, control, beneficial ownership, financial condition and existence in executing or procuring BONDS;

NOW THEREFORE, in consideration of the above stated premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby automotivelyed by PRINCIPAL and each of the INDEMNITORS, the PRINCIPAL and INDEMNITORS for themselves, their beins, executors, administrators, successors and assigns, jointly and severally, hereby covenant and agree with the SURETY, its successors and assigns, as follows:

- DEFINITIONS. Wherever they appear in this Agreement, the following terms are defined as set forth in this section:

  A. BOND means an undertaking, a contract of suretyship, guaranty or indemnity, an agreement, consent or letter to provide such an undertaking or contract, before or after the date of this Agreement, and the communition, executed, provided, or procured by the SURETY.

  B. CONTRACT means an agreement between PRINCIPAL and a third party, together with all associated documents (including but not limited to general and special conditions, special drawings) for which SURETY executes or procures the execution of a BOND.

  C. PRINCIPAL means any one, combination of, or all of the maned individuals, timus or corporations set forth below as PRINCIPAL including any of their present or future subsidiary executes and any corporations or entitles with which they may now or hereafter be controlled or affiliated, or their successors in interest,

  - future subsidiary corporations and any corporations or other persons or entitles with which they may now or hereafter be controlled or affiliated, or their successors in interest, whether alone or in joint venture with others not named herein, including any such eatily for which SURETY executes BONDS.
  - D. INDEMNITOR means any one, combination of, or all of the named individuals, firms or corporations set forth below as INDEMNITOR(S) including any of their present or future subsidiary corporations and any corporations or other persons or entitles with which they may now or hereafter be controlled or affiliated, or their successors in interest, whether alone or in joint venture with others not named herein, including any such person or entity who becenter agrees to become an INDEMNITOR under this Agreement
  - SURETY means AMERICAN SAFETY CASUALTY INSURANCE COMPANY, its reinsurers, and any other person(s) or entity(les) which the SURETY may procure to act as a SURETY or as a co-mercty of any BOND, or any other person or entity who executes a BOND at the request of the SURETY, and the successors, assigns, affiliates, associates and subsidiary companies of any of the foregoing.
  - associates and sousters comparises of any of the fortgoing.

    P. EVENT OF DEFAULT means any one or more of the following: (i) Any declaration of default by an obliges on any BOND, or any actual or alleged abandonment, forfeiture, or breach of, or failure, refusal or inability to perform any CONTRACT or obligation contained in a BOND, or the filling of any suit or commencement of any action or proceeding by a creditor or obliges of an obligation against PRINCIPAL or any INDEMNITOR, or any suspension, revocation or other material adverse change in the status of any ilectuse, permit or other right or permission to bid or perform work of PRINCIPAL with any applicable (lectusing board or agency. (ii) Any actual or alleged failure, to refer a constitution of the principal or of the principal or alleged failure to refer a constitution is the performance of any CONTRACT; (iii) The actual failure to refer a constitution is the performance of any SOND or obligation issued by SURETY. ocial, reusal or manify of the PRINCIPAL to pay claims, but or other indeptedness matured is, or in connection with, the performance of any CONTRACT; (iii) In a sexual or alleged failure to perform, or comply with, any of the terms, covenants, conditions or obligations in this Agreement, or of any BOND or obligation issued by SURETY, and the failure to pay or discharge, when due, my indebtedness or other obligation of the PRINCIPAL to the SURETY, and the failure of PRINCIPAL or any INDEMNITOR to promptly furnish accurate, complete and up-to-date financial statements or other information upon request of SURETY, or the furnishing of a financial statement or other information by PRINCIPAL or any INDEMNITOR which contains any material misstatement or misrepresentation, or which fails to contain information necessary for an accurate presentation of PRINCIPAL or any INDEMNITOR financial condition; (iv) an assignment by the PRINCIPAL or any INDEMNITOR for the benefit of creditors, or the appointment, or an application by the PRINCIPAL or any INDEMNITOR for the appointment, of a receiver or trustee for the PRINCIPAL or any INDEMINITOR or their property, whether insolvent or not, or an application by the PRINCIPAL or any INDEMINITOR for reorganization or arrangement restrictive to any INDEMNITOR of their property, whether insolvent or not, or an application by the PRINCIPAL or any INDEMNITOR for the opportunent of a receiver for threte, for iliquidation of, for the reorganization or arrangement of the PRINCIPAL or any INDEMNITOR shall be initiated by other persons; (v) If the PRINCIPAL or any INDEMNITOR is an individual, the PRINCIPAL'S or INDEMNITORS dying, abscooding, disappearing, incompetency, being convicted of a felory or imprisoned, becoming a fugitive from justice, or manying (without the spouse becoming an INDEMNITOR), or, if the PRINCIPAL or INDEMNITOR is any other type of entity, any change or threat of charge in the character, identity, control, arrangement, management, beneficial ownership or existence of the PRINCIPAL or INDEMNITOR, any discontinuation or cessation of operations, being convicted of a felony, being debarred from bidding on any lederal, state or local governmental projects, any material adverse change in the financial condition of the PRINCIPAL or any INDEMNITOR or any transfer of assets, by PRINCIPAL or INDEMNITOR, not in the ordinary course of business to a person or antity not an INDEMNITOR. Any expendition of the private or any INDEMNITOR of any transfer of assets, by PRINCIPAL or entity indicate any INDEMNITOR. Which derives or entity not an INDEMNITOR. (vi) Any proceeding or the exercise of any rights by any individual or entity, including PRINCIPAL or any INDEMNITOR, which deprives or impairs PRINCIPAL'S use of its plant, inachinery, equipment, plans, drawings, tools, supplies or materials; (vii) The happening of any evers other than those specified in (i) through (vi) which, in the SHRETY'S sale opinion, may expose SURETY to loss, cost or expense.

Initials:

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# II. INDEMNITY AND HOLD HARMLESS.

INDEMNITY AND HOLD HARMLESS.

A. The PRINCIPAL and INDEMNITORS, jointly and severally, shall exponents, hold harmless, indemnify and keep indemnified the SURETY from and against any and all claims, demands, [inb][lity, losses, costs, and exponents of whatsouver kind or reader, including court costs, adjusting costs and investigative costs, with from and against any and all other such losses and exponents which the SURETY may sustain, suffer or invent. (i) By reason of having executed or procured the execution of BONDS; (ii) By reason of the failure of the PRINCIPAL or INDEMNITORS to perform or comply with any of the coverants or conditions of this Agreement, including but not limited to the payment of all premiums due for BONDS; (iii) In enfouring any of the coverants, obligations or conditions of this Agreement, including but not limited to the payment of all premiums due for BONDS; (iii) In enfouring any of the coverants; or conditions of this Agreement, (iv) in making any investigation, obtaining or attempting to obtain a release under or exoneration of a BOND; (v). In proceeding or defending any action or claim in connection with this Agreement of any BOND, (v). In proceeding or defending any action or claim in connection with this Agreement of any BOND, (v). In proceedings of defending any action or claim in connection with this Agreement of any and the option elects to employ its own counts, or permits or requires PRINCIPAL and INDEMNITORS to make arrangements for the SURETY'S legal representation; (vi) By reason of the occurrance of any Event of Default by PRINCIPAL or any INDEMNITORS; (vii) As a result of liability incurred or exponence plain to have alternity feet and subligation, CONTRACT, or a BOND; (individing, without limitation, attorney's feet and all legal expenses, including in-house attorney's feet, adjusting feet or lovestigative feet, and all lees and costs for investigation; accounting, adjusting, engineering or other professional solvices related to the adjustment of claims and losses deem

B. Payment shall be made to the SURETY by the PRINCIPAL and INDEMNITORS as soon as liability exists or is asserted against the SURETY, or upon the demand of SURETY, whether or not the SURETY shall have made any payment therefore. Such payment shall be either equal to the amount of any reserve sa by the SURETY, or equal to such amount as the SURETY, in as sole judgment, shall deem sufficient to protect it from loss. The SURETY shall have the right to use the payment, or any part thereof, in payment or settlement of any liability, loss, cost or expense for which PRINCIPAL or the INDEMNITORS would be obligated to indemnify the SURETY under the larms of

this Agreement.

C. In the event of any payment by the SURETY, the PRINCIPAL and INDEMNITORS further agree that in any accounting between the SURETY and the PRINCIPAL, or between the SURETY and the INDEMNITORS, or either or both of them, the SURETY shall be entitled to reimbursement for any and all disbursements made by it in good. faith in and about the matters contemplated by this Agreement under the belief that it is or was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such disbursed, or the first and expedient to make such disbursed, or the first and expedient to make such disbursed or other evidence of any such payments made by the SURETY shall be prime facte evidence of the fact and amount of the liability of PRINCIPAL and INDEMNITORS to the SURETY. In addition to the payments to be made to SURETY as set forth above, PRINCIPAL and INDEMNITORS agree to pay to SURETY interest on all disbursements made by SURETY at the maximum rate permitted by law calculated from the date of each disbursement.

## III. ASSIGNMENT.

A. The PRINCIPAL, and the INDEMNITORS as their interests may appear in the following subscritions of this paragraph, hereby assign, transfer, pledge and set over to SURETY effective set of the effective date of each BOND, executed by SURETY; the nights and property described hereafter, as sublateral, to seeins any and all obligations in this Agreement and any other indebtedness or liabilities of the PRINCIPAL or INDEMNITORS to the SURETY; whether hereafters or hepeater incurred; (i) All the right and interest of the PRINCIPAL or INDEMNITORS in and to all machinery, equipment, plant, tools, inventory and materials which are now, or may be easile be utilized in connection with any CONTRACT, regardless of whether they are located at a construction site, in storage elsewhere, or in transit anywhere; (ii) All the right, hits and interest of the PRINCIPAL or INDEMNITORS in and to all successful in and to all successful interests of the PRINCIPAL or INDEMNITORS in and it all subcontracts and interest of the PRINCIPAL or INDEMNITORS in and to any actions, causes of action, claims or demands whether which the PRINCIPAL or INDEMNITORS may have or acquire against any party to any CONTRACT, or actions, causes of action, claims or demands whichoever which the PRINCIPAL or INDEMNITORS may have or acquire against any party to any CONTRACT, or actions, causes of action, claims or demands unitarity and against any sure of the principal or into inside to those against obliges on bonds, design professionals, general contractors, subcontractors, subcontractors, subcontractors, subcontractors, subcontractors, subcontractors, subcontractors, subcontractors, and against any person funishing or agreeing to funish or supply labor, material, supplies, machinery, tools, inventory or other equipment in connection with an account of any CONTRACT and against any surely of surelies of any contract, bonded or minomate, or materialment, (v) All monites etailors and any and all molitary and the individual or individual or individual or individu CONTRACT or obligation.

CONTRACT or obligation.

SURETY shall have the full and exclusive right (but not the obligation), in its name or in the name of the PRINCIPAL or INDEMNITORS, to present, compromise, release or otherwise resolve any of the claims, causes of action or other rights estigned to SURETY, inton such terms as SURETY, in its sole discretion shall deem appropriate.

C. The PRINCIPAL and INDEMNITORS hereby ineversely nominate, constitute, appoint and designate the SURETY, or its designate), through its or thick authorized representative(s), as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights of the PRINCIPAL and INDEMNITORS assigned, transferred and set over to SURETY in this Agreement, and in the name of the PRINCIPAL and INDEMNITORS to make, execute, and deliver any and all additional or other assignments, documents, papers, checks, drafts, warrants or other instruments made or larged in payment of any obligation to which SURETY has the right to receipt of payment pursuant to this Agreement deemed necessary and proper by the SURETY in order to give full effect not only to the intent and meaning of the assignments made in this Agreement, but also to the full protection intended to be herein given to the SURETY under all other provisions of this Agreement. The PRINCIPAL and INDEMNITORS bereby ratify and confirmal tacks and actions a later and drose by SURETY or its designeed) as such after provisions. confirm all acts and actions taken and done by SURETY or its designee(s) as such attorney-in-fact.

# IV. RESERVE DEPOSIT.

Initials:

A. If for any reason SURETY shall doesn it necessary to establish or to increase a restrict to cover any possible liability or loss for which the PRINCIPAL or INDEMNTORS will be obligated to indemnify SURETY under the terms of this Agreement, or to establish a collateral deposit in convection with the issuance or procurement of any BOND for PRINCIPAL, the PRINCIPAL or INDEMNTORS will deposit with SURETY, immediately upon demand, a sum of money equal to such reserve and any increase thereof as collateral security to SURETY for such tiability or loss. SURETY shall have the right to use the deposit, or any pain thereof, in payment of subliment of any inability to so, superses or other matter for which the PRINCIPAL or INDEMNTORS and be obligated to indemnify SURETY under the terms of this Agreement. SURETY shall have no obligation to invest, or to provide a return or interest on the deposit. SURETY'S demand shall be sufficient if sent by registered or certified mail to the PRINCIPAL or INDEMNTORS at the addresses stated herein or at the addresses of the PRINCIPAL or INDEMNTORS test known to SURETY, regardless of whether such tenned of the PRINCIPAL or INDEMNTORS. demand is actually received by the PRINCIPAL or INDEMNITORS.

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B. SURETY may seek a mandatory injunction to compel the deposit of such collateral together with any other remedy at law or in equity that SURETY may have. SURETY shall have the right to retain such collateral until SURETY has received salisfactory evidence of SURETY'S complete discharge and exponential or potential cialm under all BONDS and until SURETY has been fully reimbursed for any and all liability incarred from claims, demands, damages, costs, loss, expense, attorney's fees, or other items for which PRINCIPAL and INDEMNITORS are liable hereunder.

# REMEDIES UPON DEFAULT.

A. In the event of any EVENT OF DEFAULT as described in this Agreement, SURETY shall have the right, at its option, and in its sole and absolute discretion, and is hereby so authorized by PRINCIPAL and INDEMNITORS to take any one or more of the following actions: (i) To consent to any change in or alteration in any CONTRACT or in any and all plans and specifications relating thereto; (ii) To take over any CONTRACT and arringle for its completion; (iii) To take possession of PRINCIPALS office equipment, moterials and supplies at the site of the work or elsewhere, and PRINCIPALS office equipment, books and records as are necessary and utilize the same for completion of any CONTRACT; (by) To advance or tosts such funds or guarantee a load for funds either prior to or after default, as SURETY shall deem necessary for the completion of any CONTRACT and for the discharge of SURETY in connection with any CONTRACT. The repayment of such advance or four shall be the estponsibility of the PRINCIPAL and INDEMNITORS; (v) To file an immediate sult to enforce the provisions of this Agreement; (vi) To take possession of the work performed and to be performed pursuent to all or any part of any CONTRACT, and at the expense of PRINCIPAL and INDEMNITORS; to complete the performance required by the obligation of CONTRACT or to cause the same to be completed by others or to consent to the completion, thereof, and to take any other action which SURETY may deem appropriate in connection therewith; (vii) in its name or in the name of the PRINCIPAL or INDEMNITORS to adjust, scale or componing any counterstain, demand, soit or judgment should be settled or defended shall be binding and conclusive upon the PRINCIPAL and INDEMNITORS.

B. Any tuch action may be taken by SURETY with or without SURETY exercising any other right or option conferred upon SURETY by thus, equily, or the terms of this Agreement, and without waiving any other right or option so conferred upon SURETY by thus, equily, or the terms of this A. In the event of any EVENT OF DEFAULT as described in this Agreement, SURBLY shall have the right at its option, and in its sole and absolute distriction, and in

Any ruch action may be taken by SURETY with or without SURETY exercising any other right or option conferred upon SURETY by law, equity, or the terms of this Agreement, and without waiving any other right or option to conferred upon SURETY.

C. At its solo option, SURETY may reduce the amount of PRINCIPAL'S and RIDEMINITORS liability to SURETY hereunder by applying to such liability any money payable to PRINCIPAL and/or RIDEMINITORS by SURETY. The money payable to PRINCIPAL or RIDEMINITORS may be, but it not limited be, any money payable to PRINCIPAL or RIDEMINITORS as a return of uncarned or other premiums, or money payable to reduce a claim of PRINCIPAL or RIDEMINITORS as a setting of united or obtained or other premiums, or money payable to reduce a claim of PRINCIPAL or RIDEMINITORS as a setting of united by SURETY. Nothing contained betten shall operate to enlarge any obligations of SURETY to PRINCIPAL or RIDEMINITORS beyond those contained in this Agreement or in any such other contract of insurance.

D. PRINCIPAL and INDEMINITORS agree that all amounts due SURETY hortunder, and all liabilities of PRINCIPAL and INDEMINITORS to SURETY are expanded to be exercised by PRINCIPAL and INDEMINITORS signlest SURETY to PRINCIPAL and INDEMINITORS, and that no second of any such amounts or claims that he permitted to be exercised by PRINCIPAL and INDEMINITORS signlest SURETY more used as a defense against any claim of SURETY. The PRINCIPAL and DEDEMINITORS waive and substituted in full.

satisfied in full.

VI PREMIUMS. The PRINCIPAL and INDEMNITORS will pay to the SURETY all premiums and charges of the SURETY for the BONDS (including but not limited to initial; receival; additional; and contract overron premiums according to the SURETY'S current rate manual) incrediately upon isotance of each BOND, or as such premiums may sales. Any billing practice, delay in payment or other payment variance procedure shall not constitute a waiver of SURETY'S rights in obtain full payment upon the issuance of any BOND, or as such premiums may arise. The initial premium is fully earned upon assecution of the BOND.

A. The PRINCIPAL and INDEMNITORS coverent and agree that all payments received for or on account of any CONTRACT shall be held in trust as a trust fund for the payment of obligations incurred or to be incurred in the performance of any CONTRACT and used for labor, materials, and services furnished in the prosecution of the work in any CONTRACT or any extension or modification thereof. It is expressly understood and declared that all monies due and to become due under any CONTRACT are also must funds, whether in the possession of the PRINCIPAL or INDEMNITORS or otherwise. The trust funds shall be for the benefit and payment of all obligations for which the

runds, whether in the possession of the PRINCIPAL or INDEMNITORS or otherwise. The trust funds shall be for the benefit and payment of all obligations for which the SURETY may be liable under any BONDS. The trust(s) shall insure to the benefit of the SURETY for any liability or loss it may have or sustain under any BOND, and for any and all obligations of PRINCIPAL and INDEMNITORS under this Agreement, and this Agreement and declaration constitute notices of such trust.

B. If SURETY discharges any such obligation, it shall be entitled to assert the claim of such person to the must of principal, and INDEMNITORS shall, upon demand of SURETY and in implementation of the trust or trust hereby created, open an account or accounts while bank selected by SURETY which shall be designated as a trust account or accounts for the deposit of such trust funds, and shall theretopon deposit therein all moniest received pursuant to told CONTRACT or CONTRACTS. Withdrawals from such accounts shall be by check or similar instrument signed by the PRINCIPAL and countersigned by a representative of SURETY. Said trust(s) shall terminate on the payment by PRINCIPAL of all the obligations for the payment of which the trust(s) are hereby created or upon the expiration of twenty years from the data hereof, whichever shall first occur.

- VIII PERFECTION OF SECURITY INTEREST. This Agreement shall constitute a Security Agreement for the benefit of the SURSTY and also a Financing Statement, both in accordance with the provisions of the Uniform Commercial Code or any similar statute, ordinance or regulation of any jurisdiction or agency, and may be so used by the SURETY without in any way abtrogating, restricting or limiting the rights of the SURETY under this Agreement or under law or in equity. SURETY may add such schedules to this Agreement describing specific items of security covered hereunder as shall be recessary or appropriate. The SURETY may, at its option, the or record has Agreement or any other document executed by any or all of the PRINCIPAL or INDEMNITORS in connection with the application, issuance or execution of any HOND(S), or renewal thereof, coming within the scope of this instrument as a security agreement or as part of a financing statement or, as notice of its prior interest and assignment under the provisions of the Uniform Commercial Code or any other statute, ordinance or regulation of any jurisdiction or agency. The failure to so file this is not release or discharge any of the obligations of the PRINCIPAL or INDEMNITORS under this Agreement.
- EX. CHANGES. The SURETY, at its sole option, is authorized and empowered, without notice to or knowledge of FRINCIPAL or the INDEMINITIORS, to agree or refuse to agree to any change whatsoever in any BOND, or any CONTRACT, including, but not limited to, any change in the time for the completion of any CONTRACT and to payments or advances therefore the same may be due, and to assert to or take any assignment or assignments, to execute or consent to the execution of any continuations, extensions, renewals, enlargements, modifications, changes or alterations of any BOND and to execute any substitute or substitutes therefore, with the same or different conditions, provisions and obliges and with the same or larger or smaller penalties. It is expressly understood and agreed that the PRINCIPAL and INDEMINITIONS shall remain bound under the terms of this Agreement even though any such assent by the SURETY does or might substantially increase the liability of said PRINCIPAL or INDEMINITIONS. INDEMNITORS.

X AD	VANCES TO PRINCIPAL NCIPAL and money, which the SUR	The SURETY, at its sole option, is authorized and empowered to guarantee loans, to advance or lend to, or for the account of, the TY in its sole discretion may see fit to do, reserving to itself, however, the absolute right to cancel any such guarantee and to cease
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Initials: Page 3 of 8

advancing or lending money to the PRINCIPAL or for the account of the PRINCIPAL with or without cause and with or without notice to PRINCIPAL or INDEMNITORS. SURETY shall not be held responsible for application of the proceeds of such loan or advance. All money expended by the SURETY, or lent or advanced from time-to-time to, or for the second of, the PRINCIPAL or guaranteed by the SURETY, and all related cost and expense incurred by the SURETY, shall be loss to the SURETY for which the PRINCIPAL and the INDEMINITORS shall be responsible, notwithstanding that said money or any part thereof should not be so used by the PRINCIPAL.

- NU. HOOKS AND RECORDS. At any illne, and until such time as the liability of the SURETY under all BONDS is terminated or SURETY is fully reimbursed all annulus due to it under this Agreement, the SURETY shall have the right of access to the books; records, accounts and documents of the PRINCIPAL and INDEMNITORS, wherever located, for the purpose of asspection, copying or reproduction. Any financial institution, depository, maintainman, supply house, obligee, general PRINCIPAL, subcontractor, or other person, firm, or corporation, when requested by the SURETY, is hereby authorized by PRINCIPAL and INDEMNITORS in furnish the SURETY any information requested by SURETY, including, but not limited to, the status of the work under any CONTRACT being performed by the PRINCIPAL, the status, extent or condition of the performance of any CONTRACT being performed by the PRINCIPAL, the status, extent or condition of the performance of any CONTRACT being performed by the PRINCIPAL, the status, extent or condition of the performance of any contract of any CONTRACT and payment of accounts. Upon the occurrence of any Event of Default, PRINCIPAL and INDEMNITORS, upon SURETY's request, shall immediately turn over to SURETY, or its designee, at a place and in a manuer designated by SURETY, such books, records, accounts, documents and CONTRACTS in whatever form, as requested by SURETY. The expense of any inspection journated in a process of providing the providing the PRINCIPAL and INDEMNITORS, to other persons, firms or entities for the purpose of procuring constitution, which it now has or may be examine a constraint of any inspection permitted by suremans, are entitles as it may deem appropriate.
- DECLINE OF EXECUTION. PRINCIPAL and INDEMNITORS are not obligated to request the SURETY to execute, provide or procure any BOND required of them in the performance and fulfillment of obligations; however, PRINCIPAL shall not, during the term of this Agreement and while any Bond to outstanding or remains in office, without the express written consent of Surety, ingage any other person or entity to provide bonds for PRINCIPAL. Furthermore, the SURETY has the right in its sole and absolute discretion, to deciline to execute, provide or procure any BOND requested by PRINCIPAL. If SURETY does execute, provide or procure the execution of a bid bond or proposal bond, or agrees or consents to provide such contract of suretyship, SURETY retains the right in its sole and absolute discretion to deciline to execute the final bond (including, but not limited to, performance, payment or maintenance bond(s) that may be required in connection with any award that may be made under the bid proposal or tander in which this bid proposal bond or agreement or consent to provide such contract of suretyship is given, without relieving PRINCIPAL or INDEMNITORS from their liability under this Agreement in connection with the provision of the bid bond or proposal bond. SURETY shall not be liable to PRINCIPAL or INDEMNITORS for any such action, and is released from any and all liability; cost or expense arising out of, relating from any such action.
- XIIL WAIVERS BY PRINCIPAL AND INDEMNITORS. The PRINCIPAL and INDEMNITORS hereby waive and agree not to assert any of the following, to WAIVERS BY PRINCIPAL AND INDEMNITORS. The PRINCIPAL and INDEMNITORS hereby waive and agree not to assert any of the following, to the end and effect that PRINCIPAL and INDEMNITORS shall be and continue to be liable hereunder. (i) Any defense that this Agreement was executed subsequent to the date of any BOND, it being expressly understood and agreed that the PRINCIPAL and INDEMNITORS hereby admit and covernant that the BOND was executed by SURETY pursuant to the request of the PRINCIPAL and INDEMNITORS and in relience on the promise by the PRINCIPAL and INDEMNITORS to execute and perform this Agreement, (ii) Any right to claim that any of their property, including homesteads, is exempt from levy, execution, sale or odier legal process under this laws of any state, territory or possession in any action brought by SURETY under this Agreement, (iii) Any right to require SURETY to proceed against PRINCIPAL or INDEMNITORS or any other person, firm or endous or to proceed against or exhaust any security or receedy held by SURETY at any time or to pursue any other remedy in SURETY's power, (iv) The defense of the stabute of limitations in any action hereunder for the collection of any time, or amount thus under this Agreement, or the performance of any obligation indemnified hereby; (v) Any defense based upon an election of remedies by SURETY, which election may destroy or otherwise impair subrigation rights of PRINCIPAL or to realize upon any security, (vi) Any right to notice of the execution of any BOND and of the acceptance of this Agreement, (viii) Any right to notice of any obligation and of the acceptance of this Agreement, (viii) Any right to notice of any obligation and of the acceptance of this Agreement, (viii) Any right to notice of any obligation and of the acceptance of this Agreement, (viii) Any right to notice of any obligation and of the acceptance of this Agreement, (viii) Any right to notice of any obligation and all liability of the performance.

- Separate suits may be brought by SURETY against any or all of the PRINCIPAL or INDEMNITORS to enforce the teams of this Agreement as causes of action accrue, and the bringing of suit or the recovery of Judgment upon any cause of action shall not prejudice or but the bringing of other suits upon other causes of action, whether previously or subsequently erising.
- The PRINCIPAL and each INDEMNITOR is the agent for the PRINCIPAL and all INDEMNITORS for the purpose of accepting service of any process in the Jurisdiction in which the PRINCIPAL or INDEMNITORS accepting the process resides, is domicited, is doing business or is found.
- XV. OTHER SURETIES. If the SURETY procures the execution of any BOND by other sureties, or executes the BONDS with co-sureties or reinsures any portion of said BONDS with reinsuring sureties, then all the terms and conditions of this Agreement shall insure to the benefit of such other sureties, co-swettes and reinsuring sureties, as their interests may appear.

# XVL TERMINATION.

A. This Agreement is a continuing obligation of the PRINCIPAL and INDEMNITORS, and their successors, legal representatives, estates, heirs and assigns, unless terminated by written notice to SURETY as hereinafter provided, and such termination by a particular person or entity shall in no way affect the obligation of any other person or entity who has not given such notice. If PRINCIPAL or INDEMNITORS have proviously excessed an Agreement in favor of SURETY, the acceptance by SURETY of this Agreement shall not refleve PRINCIPAL or INDEMNITORS from liability to SURETY under such prior Agreement.

B. This Agreement may be terminated by PRINCIPAL or my INDEMNITOR, upon written notice to SURETY by PRINCIPAL or INDEMNITORS, or by PRINCIPAL'S or INDEMNITOR'S legal representatives or successors, by Registered or Cartified Mall addressed to SURETY at its home office shown in this Agreement, as such may be changed from them solution. Termination of this Agreement as to such person providing notice shall not be effective until thirty (30) days after receipt of said written notice by SURETY. It is understood and agreed that oral notice to or constructive notice to any agent or employee of SURETY shall not constitute affective notice of termination under this Agreement.

this Agreement.

C. Termination of this Agreement shall not relieve the PRINCIPAL or INDEMNITORS from liability to SURETY string out of any BOND executed, authorized, provided or procured by SURETY on behalf of PRINCIPAL prior to the effective date of soch termination and for which this Agreement is part of the consideration on which SURETY relied his executing; authorizing, providing or procuring such BONDS, including any renewals, substitutions and extensions thereof, and any BONDS executed pursuant to a bid or proposal bond executed or authorized prior to such effective date of termination, and any renewals, substitutions and extensions thereof, and any maintenance or guarantee bonds executed incidental to any other BOND, and any renewals, substitutions and extensions thereof.

D. The liability of the INDEMNITORS hereunder as to existing or future BONDS of PRINCIPAL, shall not terminate by reason of the failure of SURETY to disclose facts known about PRINCIPAL, even though such facts materially increase the risk beyond that which the INDEMNITORS might intend to assume. Whether SURETY may have reasonable apportunity to communicate such facts to the INDEMNITORS, the INDEMNITORS of same.

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# XVII. NOTIFICATION.

A. The INDEMNITORS agree among themselves and hereby acknowledge to SURETY that notification by SURETY to any one INDEMNITOR shall constitute notice to all INDEMNITORS. Any notice permitted to PRINCIPAL or INDEMNITOR may be sent by SURETY to their respective addresses shown in this Agreement, but failure of PRINCIPAL or INDEMNITOR to receive such notice shall not operate as a waiver of SURETY's rights or a but to enforcement of SURETY's rights. PRINCIPAL and INDEMNITORS shall notify SURETY promptly of any change of address. Written notice must be given by PRINCIPAL or INDEMNITORS to SURETY at its home office, as shown in this Agreement and as same may be changed from time-to-time, or at such other address as SURETY may provide to PRINCIPAL or INDEMNITORS from time-to-time, at the endicat practical time of any anticipated change or negotiations entered into by PRINCIPAL or INDEMNITORS for any anticipated change in the change.cc, identity, control arrangement, management, beneficial ownership (including, if a corporation, ownership of more than 5% of the stock of PRINCIPAL or INDEMNITORS).

18. The PRINCIPAL and INDEMNITORS shall promptly provide written notice to the SURETY at its home office as shown in this Agreement, as such address may be changed from time-to-time, of any of the following events: (i) Notice by any obliges on any BOND to the PRINCIPAL that the PRINCIPAL is in default or has failed or refused to perform any CONTRACT obligation; or that PRINCIPAL has failed to pay any obligation; and (ii) Notice by any obliges on any BOND to the PRINCIPAL that the PRINCIPAL cure its performance or show cause as to why the PRINCIPAL should not be terminated for default.

- XVIII. INSPECTIONS. The SURETY, by and through its authorized representatives, shall have the right, but not the obligation to inspect the PRINCIPAL'S property, documents and operations, including projects on which the PRINCIPAL is performing work, whether bonded or not, at any time and from time-to-time. The PRINCIPAL shall assure access by the SURETY'S representative to all areas of the PRINCIPAL'S property and operations. Neither the SURETY'S right to make inspections nor the making thereof, not the making of any report as a result thereof, shall sociation an undertaking, by the SURETY or its representatives, of or for the benefit of the PRINCIPAL or INDEMNITORS or any other person, firm, originization or entity to obtaining, warranty or guarantee that such property or operations are safe, appropriate or are in compliance with any law, rule, regulation, or the CONTRACT; the PRINCIPAL and INDEMNITORS shall defend, indemnify and hold harmless the SURETY from any and all claims, itselfility or loss arising out of the performance of such inspections.
- XIX. GENERAL PROVISIONS. (i) if any provision or provisions, or portion thereof, of this Agreement shall be vold or unanforceable under the laws of any jurisdiction governing its construction, this Agreement shall not be vold or vittaned thereby, but shall be concerned and enforced with the same effect as though such provision or provisions, or portion thereof, were omitted. (ii) in case any of the parties shall be defective or invalid for any reason, such fallure, defect or invalidity shall not in any manner affect the validity of this Agreement or the liability because of any of the parties shall be defective or invalid for any reason, such fallure, defect or invalidity shall not the same, but each and every party executing same shall be and remain fully bound and liable becaused or this agreement or invalidity had not existed. (iii) All rights and remedies of SURSTY under this Agreement or however otherwise derived thall be currustive, and the exercise of or fallure in exercise of the parties and remedies of SURSTY under this Agreement or however otherwise derived thall be currustive, and the exercise of or fallure in exercise of the parties and the parties of parties of the parties and the parties of parties and the parties of parties and the parties of parties against any one or interest or rights against parties parties and remedies of the parties and the interest or rights against parties parties and remedies given to SURSTY by this Agreement shall be and are in addition to, and not in liqu of, any and all rights, powers and remedies given to SURSTY by this Agreement shall be and are in addition to, and not in liqu of, any and all rights parties whether by the terms of any other agreement, by operation of law or otherwise, (iv) The PRINCIPAL or INDEMNITIORS, or others whether by the terms of any other agreement, by operation of law or otherwise, (iv) The PRINCIPAL or INDEMNITIORS or others whether by the terms of any other Agreements of Indemnity or release, exchange or return collateral of the PRINCIPAL
- XX. MERGER AND CONSOLIDATION. THE PRINCIPAL AND INDEMNITORS HAVE READ AND UNDERSTAND THIS AGREEMENT, AND HAVE CONSULTED WITH SUCH LEGAL AND OTHER PROFESSIONAL ADVISORS AS THEY DEEM NECESSARY PRIOR TO EXECUTING THIS AGREEMENT. EXCEPT FOR ANY PREVIOUS INDEMNITY AGREEMENT OR AGREEMENTS EXECUTED BY PRINCIPAL OR INDEMNITORS, THIS AGREEMENT OF INDEMNITY CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO OTHER SEPARATE AGREEMENTS OR UNDERSTANDINGS, PAST, PRESENT OR FUTURE, WHETHER ORAL OR WRITTEN, CHANGE THE TERMS OF THIS AGREEMENT.

XXL EXCEPTIONS AND WAIVER. NONE.

IN WITNESS WHEREOF, the PRINCIPAL and INDEMNITORS, intending to be legally bound hereby, have signed and sealed this Agreement the day and year first above written.

\*\*\* SIGNATURE PAGES FOLLOW \*\*\*

Initials:

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Address: 33 South Mall Plainview, NY 11803  Home Prome #: 318 3 Linus and Ave. for 4 Lee. And Provided the Proposition of the Section of the	ATTEST or 3" Party Witness:	PRINCIPAL NAME: SMC Electrical Contracting Inc.
Type Name / Title: Stefands Kallenters, Associate Plainview, NY 11803  Home Actives 218 3 Linused Ave. for 4 Lee. NJ  Home Prince 139 . STE. 1840  ACKNOWLEDGEMENT OF CORPORATE PRINCIPAL  STATE OF New York  New York  New York  On this 22 day of September 2009		
Homs Phone 8: 318 3 Linus god five for 4 Lee, 201  By: ACKNOWLEDGEMENT OF CORPORATE PRINCIPAL  STATE OP New York  New York  New York  On this 300 day of September 2019, before me, personally appeared to the person who is subscribed to in this instrument, who, being duly sworn, did depose and sey that (site is the "President" of SMC Electrical? the corporation described in, and which executed, the within instrument, that (sibe brows the sense of said corporation that the sense of said corporation described by order of the Board of Directors of said corporation, and that (sibe subscribed is that make to the winding instrument that (sibe is also as all corporation that (sibe is the Composition of the sense of the said instrument that (sibe is subscribed by side order and the depoint in factor said the acquainted with him and knows that (sibe is subscribed is share make to the winding instrument to the winding instrume	THE PROPERTY OF THE PROPERTY O	Plainview, NY 11803
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ACKNOWLEDGEMENT OF CORPORATE PRINCIPAL  STATE OF New York  COUNTY OF New York  On this A day of September 2009. before me, personally appeared personally known to me or proved to me on the basis of salls evidence to be the person who is subscribed to in this instrument, who, being duly sworm, did dopose and say that (e) he is the President of SMC Electrical? the corporation described in, and which executed, the within instrument that (e) he brows the social of sald corporation; that the seal shixed to sald instrument is such corporate in the said board of the Board of Directors of sald corporation and that (e) he algored history ment the acts by a flee porter and the within instrument by it has acquainted with him and knows that (e) he is the President of said corporation and that (s) he subscribed history name to the within instrument by it has not the said Board of Directors.  Sworm to end subscribed before me this 2 day of September 2009  Notary Public Turdence To Turdence	(AFF)X CORPORATE SEAL)	TAY SHOULD AND THE COLUMN TO THE SHOULD SHOU
COUNTY OF NEW YORK  On this Let day of September 2009, before me, personally appeared	ACKNOWLEDGE	
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corporation described in, and which executed, the width instrument; that (s)he brows (he seed of sald corporation; that the seed of sald corporation and that (s)he algored by order of the Board of Directors of sald corporation, and that (s)he algored history, name thereto by like prider; and the deponent further said that (s)he is the President of sald corporation and that (s)he subscribed history and to within instrument by a live or the said Board of Directors.  Swom to and subscribed before me this 22 day of September 2009  Notary Public Turder I (who be the Contracting Corp.)  INTERPRETATION A TANTOHEVA  NOTARY PUBLIC STATE OF NEW YORK  Registration No. 017A6112887	On this 20 day of September 2009, before me, person	warrer Gerasimowicz perionally known to me or proved to me on the basis of salisfactor
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	TEODORA L-TANTOHEVA NOTARY PUBLIC STATE OF NEW YORK Registration No. 017A6112887	Morriso J.C 2019
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TEODORAL TANTCHEVA NOTARY PUBLIC, STATE OF COUNTY OR COUNTY OF COUNTY OF COUNTY OF COUNTY OR COU		INDIVIDUAL	INDEMNITOR(S)
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American Safety Casualty Insurance Company

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TEST or 3" Parry Witness:  Stylon and John Stylon S	Corporate Indexmittor Name Meditron Real Estate Partners, LLC.  Address 641 Lexington Ave.  New York, NY 10022
me Address 20 83 Linux and Ave . Fast CC-AJS- a 7000 as Phone 8: 201: 15 85 . 1 840	o Worth Lucinos
FITX COMPORATE SEAL)	Typo Name: Walter Geraslmowicz, Managing Member
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TEODORA I. TANTCHEVA  NOTARY PUBLIC, STATE OF NEW YORK  Registration No. 017A6112037	My Commission Profess DUNG 25 20 2
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American Safety Casualty Insurance Company



American Salety Casualty Insurance Company 100 Galleria Parkway-Suite 700 Atlanta, GA. 30339 Toll frees Buo 388 3647 770,915.1908 Teb 710.955.8339 Fax:

www.mericareactymprintecom

# GENERAL AGREEMENT OF INDEMNITY

THIS General Agreement of Indemnity (hereinafter called Agreement), made and entered into this 1st 1sy of February 2010 by the undersigned as PRINCIPAL and INDEMNITORS, and American Safety Casualty Insurance Company, as SURETY; and,

WHEREAS, the PRINCIPAL, in the performance of contracts and the fulfillment of obligations generally, whether solely in its num name or as co-venium with others, may desire, or be required, to give or procure certain BONDS; and,

WHEREAS, at the request of the PRINCIPAL and the INDEMNITORS and upon the express understanding that this Agreement should be given, the SURETY has executed or procured to be executed, and may from time to time hereafter execute or procure to be executed, said BONDS on behalf of the PRINCIPAL; and

WHEREAS, the INDEMNITORS have a substantial, material or beneficial interest in the obtaining, renewing, continuing or substituting of the BONDS; and,

WHEREAS, SURETY has relied upon and will continue to rely upon the representations of PRINCIPAL and INDEMNITORS as to their character, identity, control, beneficial ownership, financial condition and existence in executing or procuring BONDS;

NOW THEREFORE, in consideration of the above stated premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by PRINCIPAL and each of the INDEMNITORS, the PRINCIPAL and INDEMNITORS for themselves, their heirs, executors, administrators, ruccessors and assigns, jointly and severally, hereby coverant and agree with the SURETY; its successors and assigns, as follows:

DEFINITIONS. Wherever they appear in this Agreement, the following terms are defined as set forth in this section:

DEFINITIONS. Wherever they oppear in this Agreement, the following terms are defined as set forth in this section:

A. BOND means an indeftable, a continue of suitelyabin, guaranty or indemnity, an agreement, consent or letter to provide such an undertabling or contract, before or after the date of this Agreement, and the continuation, exterision, alteration, renewal or substitution of nich an undertabling, contract, optimizing or contract, before or after the date of this Agreement, and the continuation, exterision, alteration, renewal or substitution of nich an undertabling, contract, optimizing or letter, whether with the same of different persuits and conditions, executed, provided, or procured by the SUREITY.

B. CONTRACT means an agreement between PRINCIPAL and a third party, together with all associated documents (including but not limited to general and special conditions, specifications and drawings) for which SUREITY executes or procures the execution of a BOND.

C. PRINCIPAL means any one, combination of, or all of the named individuals, firms or corporations set forth below as PRINCIPAL including any of their present or future subsidiary corporations and any corporations or other persons or entitles with which they may now or hereafter be controlled or affiniated, or their successors in interest, whether alone or in joint venture with others not named berein, including any such person or entity who hereafter agrees to become an RIDEMENTOR under this Agreement.

E. SURETY means AMERICAN SAPETY CASUALTY INSURANCE COMPANY, its reinsurers, and any other person(s) or entity(ler) which the SURETY may procure to set as a SURETY or as a co-surety of any BOND, or any other person or entity who executes a BOND at the request of the SURETY, and the successors, strigges, affiliates, associates and subaldiary companies of any of the foregoing.

is at a superson of the surety of any BOND, or any other person or entity with executes a BOND at the request of the SURETY, and the successors, sargus, attitutes, associates and subalisary companies of any of the following: (i) Any decisration of default by an obliged on any BOND, or any setual or alleged abandonnest, forfeiture, or breach of or follows, refusat or insuling to perform any CONTRACT or obligation contained in a BOND, or the filling of any suit or commencement of any action or proceeding by a credition or obliger of an obligation against PRINCIPAL or any INDEMATIOR, or any suspension, revocation or other material adverse change in the status of any license, permit or other right or permission to hid or perform work of PRINCIPAL with any applicable licensing board or against; (ii) Any acqual or alleged fulture, of any interest or substitute of perform, or comply with, any of the terms, coverants, conditions or obligations in this Agreement, or of any BOND or obligation issued by SURETY pursuant to this Agreement, including the failure to perform the fulture of performs to other information in the promptly furnish actuatic, complete and up-to-date functional statement, or of any BOND or obligation issued by SURETY pursuant to this Agreement, including the failure to perform the promptly furnish actuatic, complete and up-to-date functions and interest or other information upon request of SURETY, and the fulture of a financial statement or other information in promption and other information of PRINCIPAL or any INDEMNITOR for the supportance of SURETY, or the furnishing of a financial statement or other information of promption of the promption of th

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## II. INDEMNITY AND HOLD HARMLESS.

A. The PRINCIPAL and INDEMNITORS, Jointy and soverally, shall exonerate, hold hamiless, indemnity and keep indemnitied the SURETY from and against any and all claims, demands, liability, losses, costs, and expenses of whatsoever kind or nature, including court costs, attorneys fees, adjusting costs and investigative costs, and from and against any and all other such losses and expenses which the SURETY may sustain, suffer or incur; (i) By reason of having executed or procured the execution of BONDS; (ii) By reason of the failure of the PRINCIPAL or INDEMNITORS to perform or comply with any of the covenants or conditions of this Agreement, including but not limited to the payment of all prendunts due for BONDS; (iii) In enforcing any of the covenants, obligations or conditions of this Agreement, (iv) In making my investigation, obtaining or attempting to obtain a release under or expense pull or unpeld bond premium in connection with this Agreement or any BOND; (v) In prosecuting or defending any action or islam in connection with any BOND, whether SURETY is its sole option elects to employ its own counsel, or parants or requires PRINCIPAL and INDEMNITORS to make arrangements for the SURETY'S legal representation; (vi) By reason of the occurrence of any Event of Default by PRINCIPAL or any INDEMNITORS; (viii) As a result of liability incurred or amounts paid in satisfaction or settlement of any or all claims, demands, demands, demands, atmosphere, sults, proceedings or judgments relating to the PRINCIPAL's non-performance of any obligation, CONTRACT, or any other mater under or covered by a BOND; (viii) As a result of liability incurred or expenses paid in connection with claims, twits or judgments relating to the PRINCIPAL and including in-house attorney's fees, adjusting, adjusting, anglineoring or other professional services related to the adjustment of claims and losses documed necessary or appropriate in the sole discretion of SURETY.

BL. Payment shall be made to the SURETY by the PRINCIPAL and INDEMENTORS as soon as liability exists or is asserted against the SURETY, or upon the demand of SURETY, whether or not the SURETY shall have made any payment therefore; Such payment shall be either equal to the amount of any reserve set by the SURETY, or equal to such amount of any reserve set by the SURETY, or expanses such amount as the SURETY, in its sole judgment, shall deem sufficient to protect it from loss. The SURETY shall have the right to use the payment, or any part thereof, in payment or settlement of any liability, loss, cost or expense for which PRINCIPAL or the INDEMNITORS would be obligated to indemnify the SURETY under the times of

In a Agreement,

In the event of any payment by the SURETY, the PRINCIPAL and INDEMNITORS further agree that in any accounting between the SURETY and the PRINCIPAL, or between the SURETY and the PRINCIPAL, or between the SURETY and the INDEMNITORS, or either or both of them, the SURETY shall be entitled to reimbursement for any and all disbursements made by it in good fifth in and about the matters contemplated by this Agreement under the belief that it is or was liable for the turns and amounts so disbursements, whether or not such liability, necessity, or expediency existed, and, that the vouchers or other evidence of any such payments made by the SURETY shall be prime facile evidence of the fact and amount of the liability of PRINCIPAL and INDEMNITORS to the SURETY. In addition to the payments to be made to SURETY, as set forth above, PRINCIPAL and INDEMNITORS agree to pay to SURETY interest on all disbursements made by SURETY at the maximum rate permitted by law calculated from the date of each disbursement.

## III. ASSIGNMENT.

ASSIGNMENT.

A. The PRINCIPAL, and the INDEMNITORS as their interests may appear in the following subsections of this paragraph, hereby assign, transfer, gledge and set over to SURETY effective as of the effective date of each BOND executed by SURETY, the rights and property described hereafter, as collateral, to secure any and all obligations in this Agreement and any other indebtedness or liabilities of the PRINCIPAL or INDEMNITORS in, and arising in any monared out of any CONTRACT; (ii) All the right, title and interest of the PRINCIPAL or INDEMNITORS in, and arising in any monared out of any CONTRACT; (ii) All the right, title and interest of the PRINCIPAL or INDEMNITORS in and to all matchinery, equipment, plant, tools, inventory and materials which are now, or may hereafter be utilized in connection with any CONTRACT, regardless of whether they are located at a construction site, in storage elsewhere, or in transit anywhere; (iii) All the right, title and interest of the PRINCIPAL or INDEMNITORS in and to all subcontracts and parchase orders let or to be let in connection with any CONTRACT and in and to all subcontracts of the PRINCIPAL or INDEMNITORS in and to any actions, causes of action, claims or demands whatsoever which the PRINCIPAL or INDEMNITORS may have or acquire against any purty to any CONTRACT, or actions, causes of action, claims or demands arising out of or in connection with any CONTRACT including but not limited to those against obliges on bonds, design professionable, general contractors, subcontractors, abovers or materialmen or any person furnishing or agreeing to furnish or supply labor, material, supplies, machinery, tools, inventory or other equipment in connections, abovers or materialmen or any person furnishing or agreeing to furnish or supply labor, material, supplies, machinery, tools, inventory or other equipment in connections, abovers or materialmen or any collect such as a supply labor, material, supplies, machinery, tools, inventory or other equipment in connections, abov

CONTRACT or obligation.

H. SURETY shall have the full and exclusive right (but not the obligation), in its name of the PRINCIPAL, or INDEMNITORS, to proceeding compromise, receives or otherwise proof to easign of the claims, causes of action or other rights assigned to SURETY, upon such terms as SURETY, in its sole discretion shall deem appropriate.

C. The PRINCIPAL and INDEMNITORS bereby ineverably nominate, constitute, appoint and designate the SURETY, or its designee(s), through its or their authorized representative(s), as their automay-in-fact with the right, but not the obligation, to exercise all of the rights of the PRINCIPAL and INDEMNITORS assigned, transferred and set over to SURETY in this Agreement, and in the name of the PRINCIPAL and INDEMNITORS to make, execute, and deliver any and all additional or other assignments, papers, checks, drafts, warrants or other instruments made or issued in payment of any obligation to which SURETY has the right to receipt of payment pursuant to this Agreement deemed necessary and proper by the SURETY in order to give full effect not only to the intent and meaning of the estignments made in this Agreement, but also to the full protection intended to be herein given to the SURETY under all other provisions of this Agreement. The PRINCIPAL and INDEMNITORS hereby maily and confirm all acts and actions taken and done by SURETY or its designee(s) as such automory-in-fact.

RESERVE DEPOSIT.

A. If for any reason SURETY shall deem it necessary to establish or to increase a receive to cover any possible liability or loss for which the PRINCIPAL or INDEMNITORS will be obligated to indemnity SURETY under the terms of this Agreement, or to establish a collateral deposit in connection with the issuance or procurement of any BOND for PRINCIPAL, the PRINCIPAL or INDEMNITORS will deposit with SURETY, immediately upon demand, a sum of money equal to such reserve and any increase thereof as collateral security to SURETY for such liability or loss. SURETY shall have the right to use the deposit, or any part thereof, in payment or settlement of any stability, loss, expense or other matter for which the PRINCIPAL or INDEMNITORS would be obligated to indemnity SURETY under the terms of this Agreement. SURETY shall have no obligated to indemnity SURETY under the terms of this Agreement. SURETY deamned shall be addition if seat by registered in sectified mail to the PRINCIPAL or INDEMNITORS at the addresses stated herein or at the addresses of the PRINCIPAL or INDEMNITORS last known to SURETY, regardless of whether such demand is actually received by the PRINCIPAL or INDEMNITORS.

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B. SURETY may seek a mandatory injunction to compet the deposit of such collateral together with any other remedy at law or in equity that SURETY may have. SURETY shall have the right to retain such collateral until SURETY has received satisfactory evidence of SURETY'S complete discharge and exonemited from any claim or potential claim under all BONDS and until SURETY has been fully reimbursed for any and all liability incurred from claims, demands, damages, costs, loss, expense, attornoy's fees, or other thems for which PRINCIPAL and INDEMNITORS are liable hereunder.

# REMEDIES UPON DEFAULT.

REMEDIES UPON DEFAULT.

A. In the event of any EVENT OF DEPAULT as described in this Agreement, SURETY shall have the right, at its option, and in its sale and absolute discretion, and is bettery so authorized by PRINCIPAL and INDEMNITORS to take any one or more of the following actions: (i) To consent to any change in or elteration in any CONTRACT or in any and all plans and specifications relating thereto; (ii) To take over any CONTRACT and orrange for its competitor; (iii) To take possession of PRINCIPAL'S office equipment, materials and supplies at the site of the work or elsewhere, and PRINCIPAL'S office equipment, books and records as are necessary and utility the same for completion of any CONTRACT; (iv) To advance or loan such funds or guarantee a toan for funds either prior to or after default, as SURETY shall deam necessary for the completion of any CONTRACT and for the discharge of SURETY in contection with any CONTRACT. The repayment of such advance or loan shall be the responsibility of the PRINCIPAL and INDEMNITORS; (v) To take possession of the work performed and to be performed pursuant to all or any part of any CONTRACT, and at the expense of PRINCIPAL and INDEMNITORS, to complete the performance required by the ability and to be considered by others or to consent to the completion thereof, and to take any other action which SURETY may deem appropriate in working any BOND or to take whatever other action it may deem necessary, expedient or appropriate or such matter. SURETY'S determination as to whether any

connection therewith (vii) in its name or in the name of the PRINCIPAL or INDEMNITORS to adjust; souls or compromise any claim; counterclaim, demand, suit or judgment involving any BOND or to take whatever other action it may deem necessary, expedient or appropriate with respect to such matter. SURETY'S detendination as to whether any such claim; counterclaim; demand, suit or judgment should be settled or defended shall be binding and conclusive upon the PRINCIPAL and INDEMNITORS.

B. Any such action may be taken by SURETY with or without SURETY; exercising any other right or option conferred upon SURBIY by law, equity or the terms of this Agreement, and without writing any other right or option so conferred upon SURETY.

C. At its sole option, SURETY may reduce the amount of PRINCIPAL's and INDEMNITORS 'lability to SURETY', hereunder by applying to such liability any money payable to PRINCIPAL and/or INDEMNITORS by SURETY. The money payable to PRINCIPAL or INDEMNITORS may be, but is not limited to, say money payable to PRINCIPAL or INDEMNITORS or is an insurer of any other individual or legal entity, or any money payable to PRINCIPAL or INDEMNITORS as a return of presented to coher premiums, or money payable to called a claim of PRINCIPAL or INDEMNITORS against SURETY or any individual or other legal entity insured or bonded by SURETY. Nothing contained berein shall operate to enlarge any obligations of SURETY to PRINCIPAL or INDEMNITORS are any obligations of SURETY to PRINCIPAL or INDEMNITORS beyond those contained in this Agreement or in any such after contained in the little Agreement or in any such after contained before shall operate to enlarge any obligations of SURETY.

or INDEAINTORS beyond those contained in this Agreement or in any such other contract of incurance.

D. PRINCIPAL and INDEMINTORS agree that all amounts due SURETY becrumder, and all liabilities of PRINCIPAL and INDEMINTORS to SURETY are separate and independent from any actual or alleged liability of SURETY to PRINCIPAL and INDEMINTORS, and that no set-off of any such amounts or claims that the permitted to be exercised by PRINCIPAL and INDEMINTORS against SURETY nor used as a delease against any claim of SURETY. The PRINCIPAL and INDEMINTORS waive and subordinate all rights of indemnity, subragation and contribution each against the other until all obligations to the SURETY under this Agreement, at law or in equity, have been

VL PREMIUMS. The PRINCIPAL and INDEMNITORS will pay to the SURETY all permiums and charges of the SURETY for the BONDS (including but not limited to initial, retowal, additional, and contract overrum programs according to the SURETY'S corrent rate manual) immediately upon instance of each BOND, or as such premiums may arise. Any, billing practice, delay in payment or other payment variance procedure shall not constitute a waiver of SURETY'S rights to obtain full payment upon the issuance of any BOND, or as such premiums may arise. The initial procedure is fully carned upon execution of the BOND.

TRUST FUND.

A. The PRINCIPAL and INDEMNITORS coverant and agree that all payments received for or on account of any CONTRACT shall be held in trust as a must fund for the payment of obligations lineared or to be incorred in the performance of any CONTRACT and used for labor, materials, and services limitshed in the prosecution of the work in any CONTRACT or my extension or modification thereof. It is expressly understood and declared that all montes due and to become due under any CONTRACT are also bust funds, whether in the possession of the PRINCIPAL or INDEMNITORS or otherwise. The trust funds shall be for the benefit of the SURETY for any liability or loss it may have an quastan under any BOND; and for any SURETY may be liable under any BONDS. The trust's shall have to the benefit of the SURETY for any liability or loss it may have an quastan under any BOND; and for any and all obligations of PRINCIPAL, and INDEMNITORS under this Agreement, and this Agreement and declaration constitute moties of such trust.

B. If SURETY discharges any such obligation, it shall be entitled to assert the claim of such person to the trust funds; and PRINCIPAL, and INDEMNITORS shall, upon demand of SURETY and in implementation of the must or trust hereby created, upon a account or accounts for the deposit of such must funds, and shall therefore deposit therein all nonless received pursuant to said CONTRACT or CONTRACTS.

Wilderwals from such accounts that they obligations for the payment of which the trust(s) are hereby created or upon the expiration of twenty years from the date formulae on the payment by PRINCIPAL of all they obligations for the payment of which the trust(s) are hereby created or upon the expiration of twenty years from the date feating whichever shall first occur.

- VIII. PERFECTION OF SECURITY INTEREST. This Agreement shall constitute a Security Agreement for the benefit of the SURETY and also a Financing RESERVECTION OF SECURITY WITHOUT COMMERCIAL THIS Agreement data continuous a security Agreement for the ordered to be solded in a south of the Uniform Commercial Code or any similar statute, urdinance or regulation of any jurisdiction or specific and may be so used by the SURETY without in any way absorpting, restricting or limiting the rights of the SURETY under this Agreement or under law or in equity. SURETY may add such schedules to this Agreement describing specific items of security covered becauser as shall be recessary or appropriate. The SURETY may, at its option, file or record this Agreement of any other document executed by any or all of the PRINCIPAL or INDEMNITORS in connection with the application, Issuance or execution of any BOND(S), or record thereof, coming within the scope of this instrument as a security agreement or as part of a financing statement or, as notice of its prior interest and assignment under the provisions of the Uniform Commercial Code or any other statute, ordinance or regulation of any jurisdiction or agency. The failure to so file shall not release at discharge any of the obligations of the PRINCIPAL or INDEMNITORS under this Agreement.
- IX. CHANGES. The SURETY, at its sole option, is authorized and empowered, without notice to or knowledge of PRINCIPAL or the INDEMNITORS, to spree or reluse to agree to kny change in the time for the completion of any CONTRACT and to payments or advances thereunder before the same may be due, and to assent to or take any assignment or assignment, to execute or content to the execution of any continuations, extensions, renewals, entargements, modifications, changes or alterations of any BOND and to execute any substitute or substitutes therefore, with the same or different conditions, provisions and obliges and with the same or lorger or smaller penalties. It is expressly understood and agreed that the PRINCIPAL and INDEMNITORS shall remain bound under the terms of this Agreement oven though any such assent by the SURETY does or might substantially increases the liability of said PRINCIPAL or payments.

X.	ADVANCES TO PRINCIPAL	The SURETY, at its sole option, is authorized and empowered to guarantee loans, to advance or lend to,	or for the account of, th
	PRINCIPAL any money, which the SURE	TY in its sale discretion may see lit to do, reserving to itself, however, the absolute right to cancel any so	ch guarantee and to ceas

Initials: Page 3 of 8

drancing or leading money to the PRINCIPAL or for the account of the PRINCIPAL with or without cause and with or without raules to PRINCIPAL or INDEXANITORS, SURETY shall not be held responsible for application of the proceeds of such loan or advance. All maney expended by the SURETY, or that or advanced from time-to-time to, or for the account of the PRINCIPAL or guaranteed by the SURETY, and all related cost and expense incurred by the SURETY, shall be loss to the SURETY for which the PRINCIPAL and the INDEMINITORS shall be responsible, notwithstanding that said maney or any part thereof should not be so used by the PRINCIPAL.

- BOOKS AND RECORDS: At any time, and until such time as the liability of the SURETY under all BONDS is terminated or SURETY is fully reimbursed all amounts due to it under this Agreement, the SURETY shall have the right of access to the books, records, accounts and documents of the PRINCIPAL and INDEMNITORS, wherever located, for the purpose of inspection, copying or reproduction. Any financial institution, depository, materialment, supply house, deliges, general PRINCIPAL, subcontractor, or other person, firm, or componation, when requested by the SURETY, is hereby authorized by PRINCIPAL and INDEMNITORS to familish the SURETY any information requested by SURETY, including, but not limited to, the status of the very under any CONTRACT being performed by the PRINCIPAL, the status, exists or condition of the performance of any CONTRACT being performed by the PRINCIPAL, the status, exists or condition of the performance of any CONTRACT being performed by the PRINCIPAL, the status, exists or condition of the performance of any CONTRACT being performed by the PRINCIPAL, the status, exists or condition of the performance of any contract being performed by the PRINCIPAL and INDEMNITORS. SURETY and its designed, at a place and in a manner designated by SURETY, are its designed, at a place and in a manner designated by SURETY, such books, records, accounts, documents and CONTRACTS in whatever form, as requested by SURETY. The expense of any hospetion permitted hereunder, and of providing the records so specified, shall be borne by PRINCIPAL and INDEMNITORS. SURETY may fundsh any information, whileh it now has or may bereafter acquire concerning the PRINCIPAL and INDEMNITORS, to other persons, firms or entitles for the purpose of procuring controls of the persons, firms, or entitles for the purpose of procuring controls while the purpose of advising such persons, firms, or entitles as it may deem appropriate.
- NUL DECLINE OF EXECUTION. PRINCIPAL and INDEMNITORS are not obligated to request the SURETY to execute, provide or procure any BOND required of them in the performance and fulfillment of obligations; however, PRINCIPAL shall not, during the term of this Agreement and while any Bond is outstanding or ternales in effect, without the express written consent of Surety, engage any other person or entity to provide bonds for PIUNCIPAL. Furthermore, the SURETY has the right in its sole and absolute discretion, to decline to execute, provide or procure any BOND requested by PRINCIPAL. If SURETY does execute, provide or propose to bond or agrees or consents to provide such contract of suretyting, SURETY returns the right in its sole and absolute discretion in decline to execute the first bond (including, but not limited to, performance, payment or institutenance bond(s) that may be required in connection with any award that may be instituted to the first bond or agreement or content to provide such contract of suretything is given, without relieving PRINCIPAL or INDEMNITORS from their liability under this Agreement in connection with the provision of the bid bond or proposal bond. SURETY shall not be liable to PRINCIPAL or INDEMNITORS for any such action, and is released from any and all liability, cost or expanse spiring out of, relating to or resulting from any such section.
- WAIVERS BY PRINCIPAL AND INDEMNITORS. The PRINCIPAL and INDEMNITORS here by waive and agree not to ascert any of the following, to the end and effect that PRINCIPAL and INDEMNITORS shall be and continue to be liable herement; (i) Any defense that the Agreement was executed subsequent to the date of any BOND, it being expressly understood and agreed that the PRINCIPAL and INDEMNITORS hereby admit and covenant that the BOND was executed by SURETY pursuant to the request of the PRINCIPAL and INDEMNITORS to execute and perform this Agreement; (ii) Any right to claim that any of their property, including homesteads, is exempt from levy, execution, sale or other legal process under the laws of any state, territory or possession in any action brought by SURETY under this Agreement; (ii) Any right to require SURETY to proceed against PRINCIPAL or INDEMNITORS or day other person, firm or entity or to proceed against or exhaust any security or remedy by SURETY at any time or to pursue any other tenedy in SURETY's power; (iv) The defense of the statute of limitations in any action historides for the collection of any claim or amount due under this Agreement, or the performance of any obligation indemnified beneby; (v) Any defense based upon an election of remedies by SURETY, which aberion may destroy or otherwise impair subrogation rights of PRINCIPAL or to realize upon any security; (vi) Any right to notice of the execution of any BOND, and of the acceptance of this Agreement; (vii) Any right to notice of any security or the part of the SURETY under any BOND, and of the acceptance of this Agreement; (viii) Any right to notice of any and all liability of the SURETY under any BOND, and any and all liability of the SURETY under any BOND, and any and all liability of the SURETY under any BOND, and any and all liability on the part of PRINCIPAL and INDEMNITORS hereunder.

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Separate suits may be brought by SURETY against day or all of the PRINCIPAL or INDEMINITORS to enforce the terms of this Agreement as causes of aution accrue; and the bringing of suft or the recovery of judgment upon any cause of action shall not prejudice or bar the bringing of other suits upon other eauses of action, whicher previously or subsequently orising.

The PRINCIPAL and each INDEMNITOR is the agent for the PRINCIPAL and all INDEMNITORS for the purpose of accepting service of any process in the judiciction

in which the PRINCIPAL or INDEMNITORS accepting the process resides, is domiciled, is doing business or is found.

XV. OTHER SURETIES. If the SURETY procures the execution of any BOND by other sureties, or executes the BONDS with co-sureties or relevance any portion of said BONDS with releasing sureties, then all the terms and conditions of this Agreement shall imme to the benefit of such other sureties, on-sureties and releasing sureties, as their interests may appear.

# KVL TERMINATION.

A. This Agreement is a continuing obligation of the PRINCIPAL and INDEMNITORS, and their successors, legal representatives, estates, lielic and assigna, unless terminated by written notice to SURETY as hereinable provided, and such termination by a particular person or entity who has not given such notice. If PRINCIPAL or INDEMNITORS have previously executed an Agreement in favor of SURETY, the acceptance by SURETY of this Agreement shall not relieve PRINCIPAL or INDEMNITORS from liability to SURETY under such prior Agreement.

B. This Agreement may be terminated by PRINCIPAL or any INDEMNITOR upon written notice to SURETY by PRINCIPAL or INDEMNITORS, or by PRINCIPAL or INDEMNITORS legal representatives or successors, by Registered or Certified Mail addressed to SURETY at its home office shown in this Agreement, as such may be changed from time-to-time. Termination of this Agreement as to such person providing notice shall not be effective until thirty (10) days after receipt of said written notice by SURETY. It is not constitute effective notice of termination under this Agreement.

Temination of this Agreement shall not relieve the PRINCIPAL or INDEMINITORS from liability to SURETY arising our of any BOND exceeded, authorized, provided or procuring our of any BOND exceeded, authorized, provided or procuring authorizing providing or procuring such BONDS, including any renewals, substitutions and extensions thereof, and any BONDS executed pursuant to a bid or proposal bond executed or authorized prior to such effective date of termination, and any renewals, substitutions and extensions thereof, and any maintenance or guarantee bonds received incidental to any other BOND, and any renewals, substitutions and extensions thereof.

On. The Hability of the INDEMINITORS becomed as to existing or filting BONDS of PRINCIPAL shall not terminate by reason of the failure of SURETY to disclose facis known about PRINCIPAL, even though such faces materially increase the risk beyond that which the INDEMINITORS might intend to assume. Whether SURETY may have reason to believe such facts are unknown to the INDEMINITORS, or whether SURETY may have reasonable apportunity to communicate such facts to the INDEMINITORS, the INDEMINITORS become wrive notice of such facts and of any abligation of SURETY to notify INDEMINITORS of same.

Initials: Page 4 of 8 WG

# XVII. NOTIFICATION.

II. MOTHELATION.

A. The INDEMNITORS agree among menselves and hereby acknowledge to SURETY that notification by SURETY to any one INDEMNITOR shall conclude notice to all INDEMNITORS. Any notice permitted to PRINCIPAL or INDEMNITOR may be sent by SURETY to their respective addresses shown to this Agreement, but failure of PRINCIPAL or INDEMNITORS to sure the notice shall not operate as a waiver of SURETY'S rights or a bar to enforcement of SURETY'S rights. PRINCIPAL and INDEMNITORS shall notify SURETY promptly of any change of address. Written notice must be given by PRINCIPAL or INDEMNITORS to SURETY at its bigge office in the subject of the sure that and as same may be changed from time-to-time, or a tuck other address as SURETY may provide to PRINCIPAL or INDEMNITORS from time-to-time, at the carllest practical time of my anticipated change or negotiations entered into by PRINCIPAL or INDEMNITORS for any anticipated change or negotiations entered into by PRINCIPAL or INDEMNITORS.

In the PRINCIPAL or INDEMNITORS.

The PRINCIPAL or INDEMNITORS.

Ex. The PRINCIPAL and INDEMNITORS shall promptly provide written notice to the SURETY at its home office as shown in this Agreement, as such address may be changed from time-to-time, of any of the following events: (1) Notice by any obligate on any BOND to the PRINCIPAL that the PRINCIPAL is in default or has falled or refused to perform any CONTRACT obligation; or that PRINCIPAL that the PRINCIPAL care its performance or above cause as to why the PRINCIPAL should not be terminated for default.

- XVIII. INSPECTIONS. The SURETY, by and through its authorized representatives, shall have the right, but not the obligation to inspect the PRINCIPAL'S property, documents and operations, including projects on which the PRINCIPAL is performing work, whether bonded or not, at any time and from time-to-time. The PRINCIPAL shall assure access by the SURETY'S representative to all areas of the PRINCIPAL'S property and operations. Neither the SURETY'S right to make inspections not the making thereof, not the making of any report as a result thereof, shall constitute an undertaking, by the SURETY or its representatives, of or for the benefit of the PRINCIPAL or INDEMNITORS or any other person, furn, organization or entity to determine, warranty or guarantee that such property or operations are safe, appropriate or are in compliance with any lew, rule, regulation, or the CONTRACT; the PRINCIPAL and INDEMNITORS shall defend, independity and hold harmless the SURETY from any and all claims, this little to the property of the performance of the hearthest the property. liability or loss arising out of the performance of such inspections.
- [shility or loss arising out of the performance of such inspections.]

  K. GENERAL PROVISIONS. (I) If any provision or provisions, or portion thereof, of this Agreement shall be yold or unenforceable under the laws of any jurisalisting governing its construction, this Agreement shall not be void or villated thereby, but shall be executed and enforced with the same effect as though such provisions, or portion thereof, vers omitted. (II) In case any of the parties mentioned in this Agreement fall to execute the same, or in case the execution bereof by any of the provisions, or portion thereof invalid for any reason, such failure, delect or invalidity shall not be described or the liability bereunder of any of the parties executing the defective or invalidity and not existed. (III) All rights and remedies of SURETY under this Agreement or however otherwise derived shall be cumulative, and the exercise of or failure to executise may high or tended at my time shall not be an election of remody or a waiver of any other right or remody. Failure of SURETY to pursue any remote against any other of the PRINCIPAL or RNDEMNITORS. The SURETY is not required to exitual, its remedies or rights against PRINCIPAL or to await receipt of any dividends from the legal representatives of PRINCIPAL before executing its rights under this agreement against the INDEMNITORS. The rights, powers and remedies which SURETY in highs, powers and remedies which SURETY in highs, powers and remedies which SURETY may have or acquire against the PRINCIPAL or INDEMNITORS or others whether by the terms of any other agreement, and with or without notice to or knowledge of the PRINCIPAL or INDEMNITORS and the remedies which SURETY may, from time to time and with or without notice to or knowledge of the PRINCIPAL or INDEMNITORS, have betterfore accepted or released, or shall hereafter sucept or released, other Agreement and the hough of concernition. The SURETY shall have the right to III in any blanks left herein and to concert any extent in diling in a
- MERGER AND CONSOLIDATION. THE PRINCEPAL AND INDEMNITORS HAVE READ AND UNDERSTAND THIS AGREEMENT, AND HAVE CONSULTED WITH SUCH LEGAL AND OTHER PROFESSIONAL ADVISORS AS THEY DEEM NECESSARY PRIOR TO EXECUTING THIS AGREEMENT. EXCEPT FOR ANY PREVIOUS INDEMNITY AGREEMENT OR AGREEMENTS EXECUTED BY PRINCIPAL OR INDEMNITORS, THIS AGREEMENT OF INDEMNITY CONSTITUTES THE ENTIRE AGREEMENT DITWEEN THE PARTIES. no other separate agreements or understandings, past, present or future, whether oral or written, change THE TERMS OF THIS AGREEMENT.
- XXL EXCEPTIONS AND WAIVER. This agreement is in addition to and not in lieu of General Agreement of Indemnity dated 22nd day of September 2009 signed on behalf of SMC Electrical Contracting Inc.

IN WITNESS WIIEREOF, the PRINCIPAL and INDEMNITORS, intending to be legally bound hereby, have signed and scaled this Agreement the day and year fair above

\*\*\* SIGNATURE PAGES FOLLOW \*\*\*

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PRINCIPAL	- Market
ATTEST or 3th Purp Winness Say	PRINCIPAL NAME: SMC Construction Group, Inc., Address: 641 Lexington Avenue #1427 New York, N.Y. 10022  By: Latter Serastinowic File: President
	MENT OF CORPORATE PRINCIPAL
STATEOF New York }	
On this 5th ray of February 2010 before me, percent exidence to be the person who is subscribed to in this instrument, who, belt composition described in, and which executed, the within instrument that (si the se critical by order of this Board of Directors of said composition, and acquainted with. Intim and knows that (s) he is the Presider the said Board of Directors.  Sworm to and subscribed before me tale 5th day of February 20 (SEAL)	mally appeared. Waiter Gerasimowicz personally known to me or proved to me on the basis of satisfactor ining duty swom, did depose and say that (a) he is the <u>President</u> of <u>SMC****</u> the spine sense of said corporation that he seal officed to said instinuous is such corporate seal; the title (s) he signed Nather, name thereto by the order, and the deposer further said that (e) he is and corporation and that (s) he subscribed his finer name to the within instrument by a title order of the said corporation and that (s) he subscribed his finer name to the within instrument by a title order of the said corporation and that (s) he subscribed his finer name to the within instrument by a title order of the said corporation and that (s) he subscribed his finer name to the said corporation and that (s) he subscribed his finer name to the said corporation of that (s) he said corporation and the said (s) he said corporation and the said (s) he said corporation and that (s) he said corporation and the said (s) he said corporation and the said (s) he said (s) he said that (s) he said (s) he sai
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	DUAL INDEMNITOR(S)
	s Constitue
Walter Gerasimowicz sis #	Neme: SS#
one Address: <u>A.20 Pil Will Bluck</u> . #380, NY, NY esidence Phone II: 917, 441, 8741	
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ne (1) "Individual" per Notary Acknowled	gment
	AL ACKNOWLEDGEMENTS
TATEOR New York	
COUNTY OF New York Walter G	Perasimowicz
On this day of 0.2/2010, before me personally appeared	personally known to me or proved to me on the basis of satisfactory avidence to be the person at (4) he executed the same.
	Serasimowicz personally known to me or proved to me on the basis of satisfactory avidence to be the person at (sine executed the same.  10 Notary Public TECCLETTE I Toyothe Mayor
On this O day of 02/2010, before me personally appeared whose mame is subscribed to in this instrument, and administrated to me this Section and subscribed before me this O the day of February 201 (SEAL)	10 Nouvembro Tecclera I Tourichave
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American Safety Casualty Insurance Company

NOTARY PUBLIC: STATE OF NEW YORK
Registration: No. 017A6112037
Qualified in New York County
Commission Expires June 28, 2012

ADDITIONAL CORPORATE MIDEMNITO	R
ATTESTOR 3" Party Witness:  Syp Nems I File: GEDEGE FERZANT 2 15  Some Address: 200 EAST 36 ST NV. NV.  Home Phone 8: 1-2/2-868 5992  AFFIX CORPORATE SEALI	Corporato Indemnitor Name Meditron Real Estate Partners, LLC Address 641 Lexington Ave, New York, N.Y. 10022  By: All Laxing Mediter Gerasimowicz, Managing Member
ACKNOWI EDGEMENT	OF ADDITIONAL CORPORATE INDEMNITOR
all bise the seal of said corporation; that the seal affixed to said in	s) he subscribed his/her name to the within instrument by a like order of the sald Board of Directors.
ADDITIONAL CORPORATE INDEMNIT	OR
ATTEST of 3 <sup>rd</sup> Party Witness:  By:  Type Name / Tide;  Home Address:  Home Phone &:	Corporate Indemnition Name Address
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Initials:  WG  American Safety Casualty Insurance Company	TEODORA I, TANTCHEVA NOTARY PUBLIC, STATE OF NEW YORK Registration No. 01TA6112037 Qualified in New York County Commission Expires June 28, 2012